

Project: 9th Street Pedestrian Bridge  
Replacement Project  
APN: 003-243-032 and  
003-242-036

REAL PROPERTY AGREEMENT; SECONDARY  
USE OF FLOOD CONTROL OWNED LAND

THIS REAL PROPERTY AGREEMENT ("Agreement") is made by and between the SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a dependent special district of the County of Santa Barbara, their successors or assigns (herein the "DISTRICT"); and the CITY of Carpinteria (herein the "CITY") with reference to the following:

WHEREAS, DISTRICT holds fee ownership of those certain parcels of land in the County of Santa Barbara, City of Carpinteria, State of California described as APNs 003-243-032 and 003-242-036 (herein collectively the "Property"); and,

WHEREAS, the DISTRICT operates and manages flood control facilities on the Property known as the Franklin Channel; and,

WHEREAS, on July 7, 1998, the Board of Directors of the Santa Barbara County Flood Control and Water Conservation District adopted Resolution No. 98-266 establishing a policy entitled, "A Policy for Secondary Uses of Flood Control and Water Conservation Facilities for Bikeway and Recreational Purposes;" and,

WHEREAS, the CITY has requested the privilege of replacing and maintaining a pedestrian bridge over Franklin Creek Channel on a portion of the Property, and CITY desires to comply with the DISTRICT'S policy on secondary use of District owned property; and,

NOW, THEREFORE, subject to the criteria and conditions set forth in Resolution No. 98-266, and the other considerations herein set forth, it is mutually agreed and understood as follows:

1. PROPERTY and PROJECT LOCATION: DISTRICT holds fee ownership of the Property and operates a portion of the Franklin Channel thereon. The DISTRICT acquired portions of the Property for flood control purposes via Grand Deeds recorded on 11/03/1968 as Instrument number 35049, Book 2251, Page 1091, and on 03/13/1975 as Instrument number 7730, Book 2556, Page 156 in the office of the Santa Barbara County Recorder. The Property and the approximate location of the proposed pedestrian bridge are shown on Exhibit "A" attached hereto and incorporated herein by reference.

2. INDEMNIFICATION: The CITY shall defend, indemnify and save harmless the DISTRICT, (including the County of Santa Barbara) its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or



liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CITY or its agents or employees or other independent contractors directly responsible to the CITY; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the DISTRICT.

CITY shall notify the DISTRICT immediately in the event of any accident or injury arising out of, or in connection to this Agreement.

3. CITY'S OBLIGATIONS:

- a. The CITY shall be obligated and agrees to be bound by the above referenced Resolution number 98-266 which is attached hereto in its entirety and incorporated herein as Exhibit "B."
- b. CITY shall be responsible for all construction, inspection, and maintenance costs associated with the pedestrian bridge and related facilities on the Property.
- c. CITY shall install appropriate information and warning signs related to its use of the Property.
- d. City shall provide proof of insurance in accordance with the provisions contained in Exhibit "C" attached hereto and incorporated herein.

4. DISTRICT'S CONSENT: DISTRICT hereby consents to CITY'S secondary use of DISTRICT'S Property for replacement of a pedestrian bridge over the Franklin Creek Channel, as provided herein. CITY and DISTRICT further agree that any improvements made on the Property by or for the CITY shall not conflict or interfere with the use and maintenance needs of the DISTRICT and shall adhere to the following restrictions:

- a) The pedestrian bridge improvements referenced in this Agreement shall be constructed and maintained per the approved plans for the CITY of Carpinteria 9th Street Pedestrian Bridge Replacement Project as prepared by Wallace Group and as approved by the DISTRICT, on file with the CITY of Carpinteria, Department of Public Works. If the pedestrian bridge is not constructed in accordance with those plans, the DISTRICT reserves the right to halt construction and require changes as needed; and
- b) DISTRICT is not responsible for ANY damages to the pedestrian bridge and associated facilities even if such damage is associated with DISTRICT'S access to the Property and/ or work in the Franklin Channel; and
- c) Construction for the replacement of the pedestrian bridge shall not commence until the location and design of the pedestrian bridge have been approved by the National Resource Conservation Service (NRCS); and
- d) The DISTRICT shall have the right to suspend or rescind this Agreement if, in the DISTRICT'S sole opinion, the permitted activities become incompatible with DISTRICT activities, or if the interests of the DISTRICT should so require; and
- e) Except for the DISTRICT'S right to terminate, this Agreement may only be amended or

modified by the written, mutual consent of both parties.

5. ADMINISTRATION: The provisions of this Agreement shall be administered and enforced by the Santa Barbara County Director of Public Works or assignee.

6. NOTICES: Any notice to be given to the parties, by another, shall be in writing and shall be served, either personally or by prepaid mail or courier to the following:

DISTRICT: County of Santa Barbara, Public Works  
Flood Control  
130 East Victoria Street  
Santa Barbara, CA 93101

CITY: City of Carpinteria  
Attn: Public Works Director  
5775 Carpinteria Avenue  
Carpinteria, CA 93013  
Phone (805) 684-5405

or to the parties at such other place as may be designated in writing. The date of mailing, or in the event of personal delivery, the date of delivery shall constitute the date of service.

7. TERM: Unless terminated as stated herein, this Agreement to construct and maintain a pedestrian bridge and related facilities on the Property shall continue for an indefinite term.

8. ENTIRE AGREEMENT: This Agreement contains the entire understanding and agreement between the parties and there have been no promises, representations, agreements, warranties, or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein.

IN WITNESS WHEREOF, DISTRICT and CITY have executed this Secondary Use Agreement by the respective authorized officers as set forth below to be effective as of the date executed by the DISTRICT.

SANTA BARBARA COUNTY  
FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT

ATTEST:  
MONA MIYASATO  
Ex Officio Clerk of the Board of Directors of  
The Santa Barbara County Flood Control and  
Water Conservation District.

By: \_\_\_\_\_  
STEVE LAVAGNINO  
CHAIR, BOARD OF DIRECTORS

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy

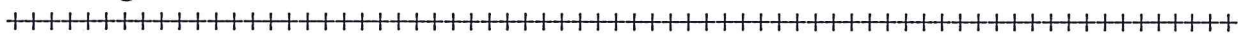
APPROVED AS TO FORM:  
MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By: Johannah L. Hartley  
Johannah Hartley

APPROVED:

By: Ray Aromatorlo  
Ray Aromatorlo, ARM, AIC  
Risk Program Administrator

By: Scott McGolpin  
Scott McGolpin  
Public Works Director



“CITY”

ATTEST

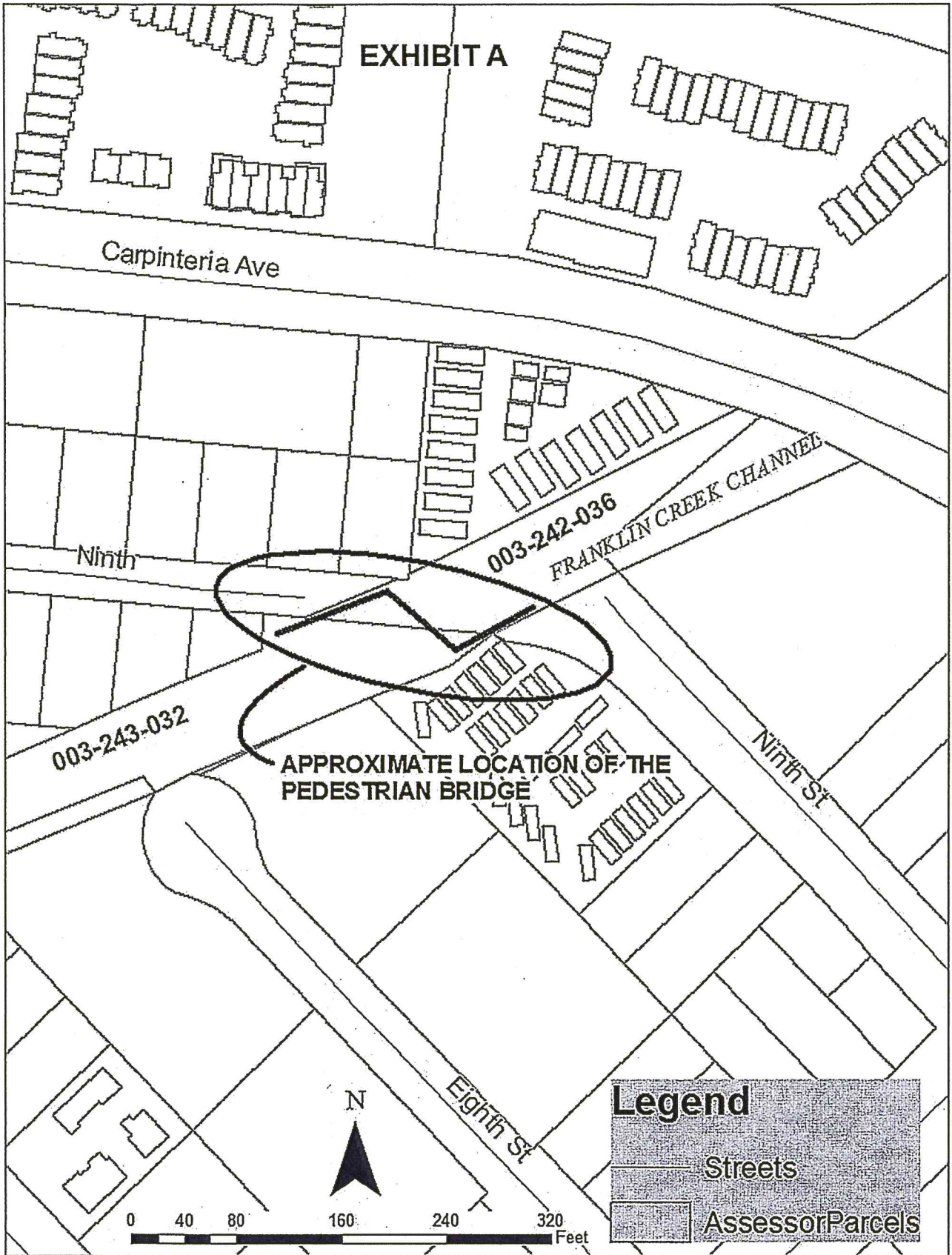
By: Fidela Garcia  
City Clerk: Fidela Garcia

CITY OF CARPINTERIA  
By: Bradley Stein  
Mayor: Bradley Stein

Approved as to Form:

By: Peter Brown for Peter Brown  
Peter Brown  
City Attorney

**EXHIBIT A**



Carpinteria Ave

Ninth

003-242-036

FRANKLIN CREEK CHANNEL

003-243-032

APPROXIMATE LOCATION OF THE PEDESTRIAN BRIDGE

Ninth St

Eighth St

N

0 40 80 160 240 320 Feet

**Legend**

Streets

Assessor Parcels

## EXHIBIT B

### "A POLICY FOR SECONDARY USES OF FLOOD CONTROL AND WATER CONSERVATION FACILITIES FOR BIKEWAY AND RECREATION PURPOSES" BY THE BOARD OF DIRECTORS OF THE SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

In order to maximize the public benefit and public convenience, it is the policy of the Santa Barbara County Flood Control District that the secondary use of Flood Control property for recreational and trail purposes shall be encouraged. To this end, the District may license or permit the use of a right-of-way for development and use for bicycle, hiking and riding trails, and other park and recreation purposes, under the following criteria and conditions:

1. A public agency empowered to engage in and finance the proposed park and/or recreation use shall enter into a formal written agreement with the District regarding such use. The District reserves the right to deny such use at its sole discretion. The public agency shall pay all District costs for developing such agreement.
2. The public agency's use shall not conflict with the District's use of its rights-of-way, which is primarily for flood control purposes. All other uses shall be subordinate to flood control purposes. The public agency shall compensate the District for any increased costs and/or decreases in revenues associated with any granted secondary uses.
3. Joint use of District fee property and/or right-of-way are limited to those uses and locations that are compatible with District operation and maintenance activities.
4. The cost of any improvements and associated maintenance necessary to accommodate the public agency's use shall be borne by that agency. Such improvements and maintenance activities shall be designed and carried out in accordance with District standards subject to District approval. Such maintenance activities shall include any litter and graffiti abatement.
5. The public agency shall establish rules and regulations for public use of the District's rights-of-way. Such rules and regulations shall be subject to District's approval.
6. Where the District's interest in its right-of-way is less than fee ownership, the public agency shall secure written permission from the fee owner for its intended use.
7. The public agency shall secure all other required permits for the intended use from any other agencies having jurisdiction. Any and all conditions of such permits which may affect the District's property shall be approved by the District.
8. Any changes to District facilities necessary to accommodate the public agency's use shall be made, and any damage to District facilities arising from the public agency's

## EXHIBIT B

use shall be repaired forthwith, at the public agency's sole expense.

9. The District shall not be liable for any damage to improvements made by the public agency which arise from the District's use of its rights-of-way for flood control purposes, including changes which the District may make to its facilities.
  10. The District shall not be liable for any injury or damage to persons or property arising out of the use of its rights-of-way for park and recreation purposes.
  11. The public agency shall defend, indemnify and hold harmless the District against any and all claims or lawsuits arising out of or connected with the use of the District's rights-of-way for park, recreation, or other uses. Such indemnification language in the agreement shall be in a form acceptable to County Counsel and Risk Management.
  12. All proposed uses are subject to approval by the District and must be compatible with the use and maintenance needs of the District.
  13. Recreational facilities planned along a flood control facility either constructed by, or in cooperation with a federal agency, must receive approval from the federal agency in addition to the District. Federal requirements may specify whether a license or permit will be issued.
  14. Only approved uses will be granted a license or permit for the use. The District reserves the right to suspend or revoke a license or permit if, in the District's sole opinion, the permitted activities become incompatible with District activities or if the interests of the District should so require.
-



## EXHIBIT C Insurance Requirements

### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CITY shall notify DISTRICT immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

### INSURANCE

CITY shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CITY, his agents, representatives, employees or subcontractors.

#### A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CITY has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the CITY maintains higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to coverage for the higher limits maintained by the CITY. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

#### B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – DISTRICT, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CITY including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CITY's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CITY's insurance coverage shall be primary insurance as respects the DISTRICT, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the DISTRICT, its officers, officials, employees, agents or volunteers shall be excess of the CITY's insurance and shall not contribute with it.

## EXHIBIT C

### Insurance Requirements

3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the DISTRICT.
4. **Waiver of Subrogation Rights** – CITY hereby grants to DISTRICT a waiver of any right to subrogation which any insurer of said CITY may acquire against the DISTRICT by virtue of the payment of any loss under such insurance. CITY agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the DISTRICT has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the DISTRICT. The DISTRICT may require the CITY to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CITY shall furnish the DISTRICT with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the DISTRICT before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CITY's obligation to provide them. The CITY shall furnish evidence of renewal of coverage throughout the term of the Agreement. The DISTRICT reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, DISTRICT has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by DISTRICT as a material breach of contract.
9. **Subcontractors** – CITY shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CITY shall ensure that DISTRICT is an additional insured on insurance required from subcontractors.
10. **Special Risks or Circumstances** – DISTRICT reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CITY agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of DISTRICT to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of DISTRICT.